

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID ECKERT,

Plaintiff,

vs.

No. CIV 13-0727 JB/WPL

DANIEL DOUGHERTY and
ROBERT WILCOX,

Defendants.

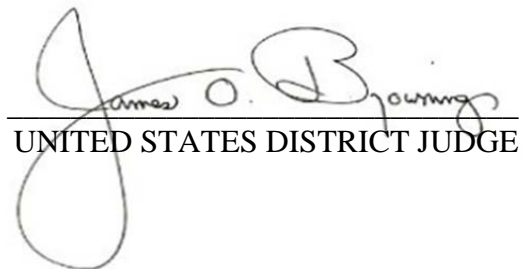
ORDER¹

THIS MATTER comes before the Court on: (i) the Motion and Memorandum in Support for Summary Judgment/Dismissal of All Claims Against Defendant Robert Wilcox, M.D., filed December 12, 2013 (Doc. 40)(“MSJ”); (ii) Defendant Deputy District Attorney Daniel Dougherty’s Motion to Dismiss on the Grounds of Immunity, filed December 11, 2013 (Doc. 41)(“Dougherty’s MTD”); and (iii) the Plaintiff’s Opposed Motion to Dismiss All Remaining State Law Claims Pending Against Defendant Robert Wilcox, M.D., Without Prejudice, filed May 30, 2014 (Doc. 63)(“Eckert’s MTD”). The Court held a hearing on August 29, 2014. The Court will grant Dougherty’s MTD in part and deny it in part. The Court will grant Dougherty’s MTD as to Count IV of the Complaint to Recover Damages for Deprivation of Civil Rights and Personal Injury, filed August 7, 2013 (Doc. 1)(“Complaint”), because the

¹This Order disposes of: (i) the Motion and Memorandum in Support for Summary Judgment/Dismissal of All Claims Against Defendant Robert Wilcox, M.D., filed December 12, 2013 (Doc. 40); (ii) Defendant Deputy District Attorney Daniel Dougherty’s Motion to Dismiss on the Grounds of Immunity, filed December 11, 2013 (Doc. 41); and (iii) the Plaintiff’s Opposed Motion to Dismiss All Remaining State Law Claims Pending Against Defendant Robert Wilcox, M.D., Without Prejudice, filed May 30, 2014 (Doc. 63). The Court will, however, at a later date issue a Memorandum Opinion more fully detailing its rationale for these decisions.

Court finds that prosecutorial immunity protects Defendant Daniel Dougherty from liability for his approval of the search warrant. The Court will dismiss the Complaint without prejudice to amendment, and Plaintiff David Eckert may file a motion for leave to amend the Complaint to allege that Dougherty directed police officers to conduct an unlawful search. The Court will grant Eckert's MTD and, therefore, deny the MSJ as moot.

IT IS ORDERED that: (i) the requests in the Motion and Memorandum in Support for Summary Judgment/Dismissal of All Claims Against Defendant Robert Wilcox, M.D., filed December 12, 2013 (Doc. 40), are denied as moot; (ii) Defendant Deputy District Attorney Daniel Dougherty's Motion to Dismiss on the Grounds of Immunity, filed December 11, 2013 (Doc. 41), is granted in part and denied in part; and (iii) the Plaintiff's Opposed Motion to Dismiss All Remaining State Law Claims Pending Against Defendant Robert Wilcox, M.D., without Prejudice, filed May 30, 2014 (Doc. 63), is granted. The Court, accordingly, dismisses the Complaint to Recover Damages for Deprivation of Civil Rights and Personal Injury, filed August 7, 2013 (Doc. 1), as to Defendant Daniel Dougherty, without prejudice to the Plaintiff David Eckert filing a motion for leave to amend the complaint to allege that Dougherty directed police officers to conduct an unlawful search of Eckert. Eckert must file the motion for leave to amend within ten days of the Court issuing the Memorandum Opinion for this Order.



UNITED STATES DISTRICT JUDGE

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